IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JACQUELINE YATES,	:	
Plaintiff	:	
	:	
v.	:	Civil Action AMD 03-2804
	:	
WAL-MART STORES, INC.,	:	
Defendant	:	

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MEMORANDUM OPINION

This is a personal injury action arising out of a "slip and fall" accident at the Wal-Mart store in Hagerstown. Defendant timely removed the case from state court. Discovery has concluded and now pending is defendant's motion for summary judgment. No hearing is needed. For the reasons set forth below, the motion will be granted.

I.

On June 21, 2000, Ms. Yates entered the Wal-Mart store in Hagerstown, Maryland, accompanied by her elderly aunt. After the couple's shopping was largely concluded, her aunt headed for the check out lines with their shopping cart, while Ms. Yates went to pick up one last item, dental floss. As she walked down an aisle that was partially blocked with "pallet jacks" containing fresh merchandise ready for shelving, Ms. Yates slipped on a thick liquid substance that had formed in a pool approximately eight to ten inches in diameter on the floor of the aisle. Ms. Yates broke her ankle as a result of the fall. For purposes of summary judgment, it shall be assumed, as plaintiff contends, that the substance was hair shampoo; an open bottle of hair shampoo had been left by some unknown person atop one

of the boxes of merchandise in the aisle. (Apparently, the bottle had fallen to the floor, as evidenced by the broken plastic cap, and its contents had spilled out before it was picked up and placed, now half empty, on one of the boxes of merchandise).

Plaintiff contends that Wal-Mart was negligent in that it knew or should have known of the existence of the dangerous condition of the floor created by the spilled shampoo and it failed to exercise reasonable care in discovering the spill. This contention is based on three closely related assertions: (1) the shampoo would have been present for a lengthy period of time because the pool of shampoo had reached a diameter of eight to ten inches, it was a thick substance, and therefore required "considerable" time to spread to such a diameter; (2) the presence of nearby merchandise on "pallet jacks" supports an inference that a store employee was working in the area and should have discovered the spill (if, indeed, he or she were not actually responsible for the spill); and (3) the absence of a record of regular inspections of the area.

II.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to summary judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). For purposes of summary judgment, a dispute about a fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and a fact is material if, when applied to the substantive law, it affects

the outcome of litigation. *Id*.

A party seeking summary judgment bears the initial responsibility of informing the court of the basis of its motion and identifying the portions of the opposing party's case which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When considering the motion, the court assumes that all of the non-moving party's evidence is worthy of belief and justifiable inferences are drawn in favor of the non-moving party. *Matsushita Elec. Indust. Co. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986). If the non-moving party fails to establish the existence of an essential element of its case, the moving party is entitled to summary judgment as a matter of law. *Celotex Corp.* 477 U.S. at 322. If the movant demonstrates there is no genuine issue of material fact and that she is entitled to summary judgment as a matter of law, the non-moving party must, in order to withstand the motion for summary judgment, produce sufficient evidence in the form of depositions, affidavits or other documentation which demonstrates that a triable issue of fact exists for trial. *Id*. at 324. The existence of only a "scintilla of evidence" is not enough to defeat a motion for summary judgment. Instead, the evidentiary materials must show facts from which the finder of fact could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 252.

III.

Under Maryland law, a store owner owes a duty to its customers, i.e., business invitees, to keep the premises in a reasonably safe condition. Although the store owner is

not an insurer of its customers while they are on the premises, *Rawls v. Hochschild, Kohn & Co, Inc*., 207 Md. 113, 118 (1955), it is liable for injuries sustained by business invitees where the store owner: (1) has actual or constructive notice of the hazardous condition; (2) should have anticipated that the customer would not discover the condition or would fail to protect herself against it; and (3) failed to take reasonable steps to make the premises safe or give adequate warning of the condition. *Gast, Inc. v. Kitchner*, 247 Md. 677, 685 (1967) (citing R*estatement (Second) of Torts* § 343 (1965)).

Defendant argues that Ms. Yates cannot establish the first of the required elements of a prima facie case of negligence-- that its employees had actual or constructive notice of the hazardous condition upon which plaintiff slipped and fell. Plaintiff acknowledges that to avoid an adverse summary judgment, she must produce sufficient evidence to permit a reasonable juror to conclude that defendant had actual or constructive knowledge of the hazardous condition.

Although plaintiff speculates that a store employee may have actually caused the spill or may have had *actual knowledge* of its presence (from working in the area stocking shelves), that speculation is unsupported by any evidence; it is exactly that: speculation. Thus, plaintiff must rely on proof of constructive notice, i.e., she must project evidence sufficient to permit a finding that defendant could have discovered the condition by the exercise of ordinary care so that, if it is shown that the condition existed for a length of time sufficient to permit a person under a duty to discover it if he had exercised ordinary care, his

failure to discover it may in itself be evidence of negligence sufficient to charge him with knowledge. *Rawls*, 207 Md. at 120. Again, plaintiff asserts that defendant had constructive notice because of the "considerable" amount of shampoo on the floor, i.e., it had been there long enough to have assumed a diameter of eight to ten inches and therefore long enough to have been discovered through the exercise of reasonable care.

Maryland case law generally encompasses two basic categories of constructive notice in slip and fall cases: (1) slip and falls on "foreign substances;" and (2) slip and falls on conditions created directly by the store owner. In foreign substance cases, courts have been reluctant to conclude that the store owner had notice where it is unclear how long the condition existed and the hazardous condition could have been created by a customer. *See Moulden v. Greenbelt Consumer Servs., Inc*., 239 Md. 229, 233 (1965); *see also Rawls*, 207 Md. at 113. In contrast, courts have been more likely to conclude that there was constructive notice in cases where the store owner affirmatively created the hazardous condition. *See Link v. Hutzler Bros. Co*., 25 Md. App. 586, *cert. denied*, 275 Md. 750 (1975) (customer fell after store owner waxed floor); *Chalmers v. Great Atlantic and Pacific Tea Co*., 172 Md. 552 (1937) (customer fell over a carton of canned goods placed in aisle by store owner).

This is a case of the former variety. Plainly, Ms. Yates has not marshaled any evidence, aside from her own speculation, to establish how long the dangerous condition was present. Evidence is legally sufficient to warrant the submission of a case to a jury only if it rises above speculation and conjecture. *Moulden*, 239 Md. at 232. *See Carter v. Shoppers*

Food Warehouse MD Corp., 126 Md. App. 147 (1999) (where plaintiff slipped and fell in produce department and claimed the cause was store's negligent maintenance of a mat in allowing edge to become turned up, court reasoned that plaintiff failed to present evidence that store owner had actual or constructive knowledge of the condition where it was not clear how long the mat was turned up before the fall). The mere fact that the spilled shampoo had spread to a diameter of from eight to ten inches simply does not support a rational inference as to the length of time the condition existed. Because defendant has no continuing duty to inspect and plaintiff cannot present any evidence as to how long the shampoo was on the floor, she is unable to establish a prima facie case of negligence.

IV.

As a matter of law, plaintiff has unearthed no legally sufficient evidence to establish constructive notice on the part of defendant. Accordingly, defendant's motion for summary judgment will be granted. A separate order follows.

Filed: May 11, 2004

/s/
Andre M. Davis
United States District Judge

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ORDER

Pursuant to the foregoing Memorandum Opinion, and for the reasons stated therein, it is this 11th day of May, 2004, by the United States District Court for the District of Maryland, hereby ORDERED

(1) That Defendant's Motion for Summary Judgment is GRANTED and judgment is entered in favor of Defendant and against Plaintiff; and

(2) That the Clerk shall CLOSE THIS CASE.

/s/
Andre M. Davis
United States District Judge